

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Cr1.A.No.1209 of 2000

M.A.Nachimuthu .. Appellant/Complainant

Vs.

Thiru N.Ravichandran ... Respondent/Accused

Prayer: This appeal has been preferred against Judgment dated 21.11.2000, in C.C.No.89 of 1998, on the file of the Judicial Magistrate No.I, Mettur.

For Appellant : Mr.M.Sathyanarayanan

For Respondent : Mr.R.John Sathyan

JUDGMENT

This appeal has been preferred against the judgment in C.C.No.89 of 1998 on the file of the Judicial Magistrate No.I, Mettur Dam. The complainant is the appellant herein

2. The short facts in the complaint are as follows:-

On 01.10.1998 the accused had borrowed Rs.2,00,000/- by way of hand loan from the complainant and to discharge the said debt, the accused had drawn a cheque for Rs.2,00,000/- and when the cheque was presented in Madura Bank, Vanavasi Branch, where the complainant is having his account, the said cheque was bounced on 12.10.1998 on the ground that there is no sufficient funds in the account of the accused. A notice was issued by the complainant on 15.10.1998 but the same was returned unserved on 16.10.1998. Hence, the complaint under section 200 of Cr.P.C., for offence under Section 138 of the Negotiable Instrument Act.

3. The said complaint was taken on by file, after recording the sworn statement of the complainant by the learned Judicial Magistrate No.I, Mettur Dam as C.C.No.89 of 1998. On appearance of the accused on summon, copies under Section 207 of Cr.P.C., were furnished to the accused and when the offence was explained to the accused, he pleaded not guilty. On the side of the complaint P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.5 were marked.

4. P.W.1 is the complainant. He would depose that the accused is his sister's son and that he is indulging in contract work and that he use to borrow hand loan from him(P.W.1) and on 01.10.1998 the accused had borrowed Rs.2,00,000/- with an undertaking to return the same within one week and to discharge the said loan the accused had drawn a cheque for Rs.2,00,000/- on 09.10.1998. When the cheque was presented in Madura Bank, Vanavasi branch, the same was returned on 12.10.1998 on the ground that there was no sufficient funds in the account of the accused. Ex.P.2 is the bank slip. Ex.P.3 is the advice slip issued by Madura Bank, Vanavasi branch. He had issued a notice dated 15.10.1998 but the same was returned. Ex.P.4 is the copy of the notice. The return cover containing the original notice is Ex.P.5.

5. P.w.2 is the Bank Manager in Madura Bank, Vanavasi Branch. He would depose that on 09.10.1998 P.W.1 has deposited Ex.P.1-cheque for Rs.2,00,000/- for encashment. The said cheque was drawn in Lakshmi Vilas Bank. When the said cheque was sent to Lakshmivilas Bank, Jalagandapuram branch, for collection, but the same was returned on 14.10.1998 with an endorsement that there was no sufficient funds in the account of the drawer. Ex.P.2 is the bank memo and Ex.P.3 is the collection voucher.

6. P.W.3 is the cashier of Lakshmi Vilas Bank, Jalagandapuram branch. He would depose that the accused is having a current account in his Lakshmi Vilas Bank and his current A/c No. is 1452 and that Ex.P.1 is a cheque leaf of the pass book issued by their bank in favour of the accused and Ex.P.1 is for Rs.2,00,000/- dated 09.10.1998 drawn in the name of the complainant and it's number is 626468 and the cheque was forwarded to Lakshmi Vilas Bank from Madura Bank, Vanavazi branch, on 12.10.1998 and that the said cheque was returned with an endorsement that there was no sufficient funds in the account of the drawer. Ex.P.2 is the memo showing the reason for the return of Ex.P.1-cheque.

7. On the above evidence both oral and documentary incriminating circumstances were put to the accused, to which the accused denied his complicity with the crime. The accused has examined himself as D.W.1 and exhibited Ex.D1 and Ex.D.2. On the available evidence both oral and documentary the learned trial judge has come to the conclusion that the charge under section 138 of the Negotiable Instrument Act, has not been proved against the accused and accordingly the learned trial judge acquitted the accused under Section 255(1) of Cr.P.C. Aggrieved by the findings of the learned trial judge, the complainant has preferred this appeal.

8. Now the point for determination in this appeal is whether the judgment in C.C.No.89 of 1998 on the file of the Judicial Magistrate No.I, Mettur Dam, is liable to be dismissed for the reasons stated in the memorandum of appeal?

9. The Point:- It is the definite case of the complainant that the accused had borrowed Rs.2,00,000/- on 01.10.1998 as hand loan and only to discharge the said loan the accused had drawn Ex.P.1-Cheque for Rs.2,00,000/- on 09.10.1998. To attract the offence under Section 138 of Cr.P.C., a cheque is to be drawn by any person who is having an account with a bank to another person in order to discharge whole or part of any debt or other liability and on presentation dishonoured then only the accused is liable to be prescribed under Section 138 of the Negotiable Instruments Act. The explanation to Section 138 of the Negotiable Instruments Act reads as follows:- For the purpose of this Section, "debt or other liability" means a legally enforceable debt or other liability". To substantiate his contention the complainant has not let in any evidence to show that he had lent Rs.2,00,000/- as hand loan to the accused on 01.10.1998. Burden is heavily on the complainant to show that on the date of drawal of Ex.P.1-cheque for Rs.2,00,000/- in favour of the complainant there was legally enforceable subsisting debt or other liability in favour of the complainant against the accused. Except the ipsi-dixit of P.W.1, the complainant, there is no document produced or any other witness examined to show that there was a subsisting liability on the date of drawal or before the date of drawal of Ex.P.1-cheque. Under such circumstances, I am of the view that the offence under Section 138 of the Negotiable Instruments Act will not be attracted against the accused to warrant conviction under the above said provision of law. Under such circumstances, I am of the opinion that the findings of the learned trial judge in C.C.No.89 of 1998 on the file of the Judicial Magistrate No.I, Mettur Dam, need not be set aside for the reasons stated in the memorandum of appeal. Point is answered accordingly.

10. In the result, the appeal is dismissed confirming the judgment in C.C.No.89 of 1998 on the file of the Judicial Magistrate No.I, Mettur Dam.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To,

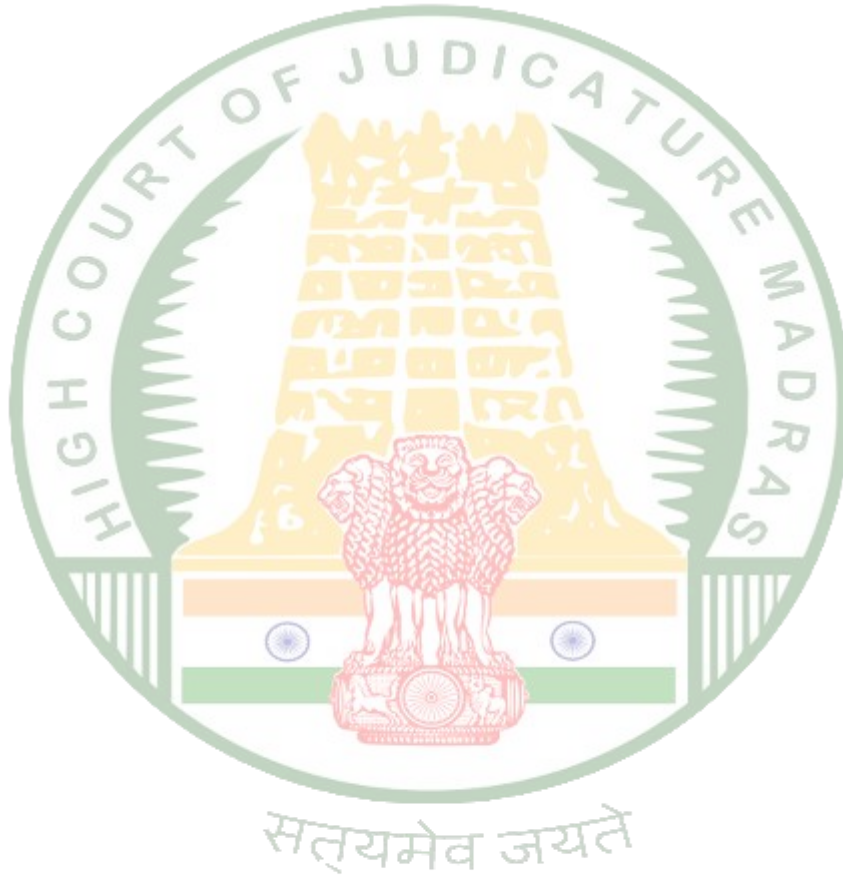
The Judicial Magistrate No.I, Coimbatore.

1 cc To Mr.M.Sathyanarayanan, Advocate, SR.18531.

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SSV (CO)

RVL 28.03.2007



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